

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.** See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**  
**JUNE 17 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

AMBER H.,	)	
	)	
Appellant,	)	2 CA-JV 2009-0021
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
GRACIELA G. and JENNA G.,	)	Rule 28, Rules of Civil
	)	Appellate Procedure
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause Nos. SV2008-008 and DO2005-271

Honorable D. Corey Sanders, Judge Pro Tempore

AFFIRMED

Harriette P. Levitt

Tucson  
Attorney for Appellant

Matt N. Clifford

Safford  
Attorney for Appellees

V Á S Q U E Z, Judge.

¶1 Appellant Amber H. appeals from the juvenile court’s February 2009 order terminating her parental rights to Jenna G. on grounds of abandonment and incarceration. The order followed a contested hearing on the private severance petition filed by Graciela

G., Jenna's paternal grandmother. *See* A.R.S. § 8-533(B)(1), (4). Amber contends the court applied the wrong standard in ruling on the petition. She also seems to suggest the evidence fell short of the clear-and-convincing standard of proof necessary to support either statutory ground for terminating her parental rights. We disagree and affirm.

¶2 A juvenile court may terminate a parent's rights only if it finds by clear and convincing evidence that a statutory ground for severance has been established and finds by a preponderance of the evidence that termination of the parent's rights is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); Ariz. R. P. Juv. Ct. 66(c); *see also Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, we "accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 Graciela filed a petition to terminate Amber's parental rights to Jenna in June 2008. Graciela alleged that Jenna, born in May 2001, had lived with Graciela since the child was two years old and that, during the past four years, Amber had provided no support for Jenna and had made no contact with her, thereby establishing a prima facie case of abandonment. *See* A.R.S. § 8-531(1) (defining abandonment and making failure to maintain normal parental relationship with child for six months prima facie evidence of abandonment). Graciela alleged further that Amber was in prison and that, in 2005, Graciela had been awarded custody of Jenna pursuant to A.R.S. § 25-415. After a hearing held over two days, the first in November 2008 and the second in January 2009, the juvenile court found both

statutory grounds alleged in the petition had been established by clear and convincing evidence and further found that a preponderance of the evidence established termination of Amber's parental rights was in Jenna's best interests.

¶4 On appeal, Amber contends the juvenile court applied the wrong standard of proof in evaluating the evidence. Specifically, she argues the court considered whether the evidence established by a preponderance that she had abandoned Jenna and that she had been incarcerated for a period of years such that Jenna had been and would continue to be deprived of a normal home. Amber asserted, both summarily in her argument heading and implicitly in the argument itself, that the evidence presented was not clear and convincing. In particular, she pointed to evidence that reflected her desire to establish a relationship with Jenna, suggesting this negated the evidence proving she had abandoned the child.

¶5 Although the minute entry from the hearing suggests the juvenile court only applied a preponderance-of-the-evidence standard, that was not the court's final order. In the final order, entered on February 12, 2009, the court articulated the correct standards. It found the statutory grounds alleged had been proven by clear and convincing evidence and a preponderance of the evidence established termination and adoption were in Jenna's best interests. The transcript of the hearing also reflects the court was aware of and applied the correct standards of proof.

¶6 Assuming Amber is also challenging the sufficiency of the evidence under the correct standard, there was more than sufficient evidence to support the juvenile court's findings. When the severance hearing began in November 2008, Jenna was seven years old

and had been living with Graciela since she was two. When placed in Graciela's care, Jenna could not walk, she was having difficulties crawling, she had a bald spot on the back of her head, she was very thin and appeared malnourished, and she appeared to be developmentally delayed in a variety of ways. Jenna's aunt testified Jenna would occasionally search through the trash can for food. The aunt also testified about the progress Jenna made during her first months of living with Graciela and stated that, at the time of the hearing, Jenna was a well-adjusted, healthy child. Graciela testified about the neglected state Jenna had been in when she arrived. Jenna improved rapidly once Graciela obtained proper medical care for her.

¶7 Jenna's therapist testified Jenna knew Amber was her biological mother but regarded Graciela as her mother and Graciela's husband as her father. Jenna did not associate Amber as a caregiver and was instead bonded to her grandparents. The therapist testified that terminating Amber's parental rights would be in Jenna's best interests because Jenna needed the stability her grandparents provided, noting Jenna lived in fear that her biological mother would remove her from the place where she had become happy.

¶8 Jenna's biological father, who agreed to relinquish his parental rights if Amber's rights were terminated, testified about Amber's substance abuse issues before she had placed Jenna in Graciela's care. He stated that Jenna had arrived at Graciela's home seriously neglected, that Jenna had only a vague idea who Amber was, and that Jenna was completely bonded with Graciela, whom she referred to as "Mom" and believed to be her mother. He testified further that he wanted his mother to adopt Jenna and that it would "tear both of them up" if Jenna were taken from Graciela because their bond was so strong.

¶9 The record establishes Amber had forged no relationship with Jenna for years and had only expressed an interest in her at about the time of the severance hearing. Amber had offered very little in the way of support and had made only token contacts with Jenna. Amber admitted she had begun using methamphetamine when Jenna was just over a year old, that she had been sentenced in 2005 on aggravated assault charges that involved her passenger's having shot at a police officer from the car she was driving, and that her earliest possible release date was April 2009, taking into account her "good-time" credits. She admitted that, by the time she is released from prison, she will not have seen Jenna for over five years. Amber conceded Jenna was bonded with Graciela and stated she did not want Jenna taken away from Graciela; she did not want custody of Jenna. She admitted she did not have a relationship with Jenna at the time but hoped that, after her release from prison, she could develop one.

¶10 Amber seems to be suggesting that this court reweigh the evidence. But it is for the juvenile court, as the trier of fact, to weigh the evidence after determining the credibility and persuasiveness of the witnesses. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d 943, 947 (App. 2004). We defer to the court's findings of fact and will uphold its order as long as reasonable evidence supports the factual findings upon which the order is based. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205.

¶11 Although we need only find one statutory ground adequately established in order to sustain the juvenile court's order, *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000), the juvenile court found the evidence sufficient to sever

Amber's parental rights on both grounds alleged in the petition. At the end of the hearing, the court explained its ruling thoroughly, noting the interrelationship between the two grounds of abandonment and felony incarceration but finding Graciela had established a prima facie case of abandonment based on a six-month period that preceded Amber's incarceration. With respect to the period of incarceration, the court commended Amber on some of the efforts she had made to contact Jenna but noted the significant period of Jenna's life during which Amber had been absent. As the court pointed out, Amber had been in prison during Jenna's formative years, during which time, it was fortunate Graciela had filled the role of mother and nurturer. The court expressly acknowledged it had considered the criteria in *Michael M. v. Ariz. Dep't of Econ. Sec.*, 202 Ariz. 198, ¶ 8, 42 P.3d 1163, 1165 (App. 2002), and *Michael J.*, 196 Ariz. 246, ¶ 29, 995 P.2d at 687-88, and found Graciela had sustained her burden of proving both of the grounds she had alleged for terminating Amber's rights. In light of those findings and the court's additional comments, we have no basis for disturbing the court's February 2009 order terminating Amber's parental rights to Jenna.

¶12 Affirmed.

---

GARYE L. VÁSQUEZ, Judge

CONCURRING:

---

PETER J. ECKERSTROM, Presiding Judge

---

J. WILLIAM BRAMMER, JR., Judge